Supreme Court, U.S.
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No. 02-77

In The
Supreme Court of the United States

DANIEL BARRON, Petitioner

v.

STATE OF CALIFORNIA, Respondent

On Petition for Writ of Certiorari
to the California Court of Appeal,
Second Appellate District, Division Six

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Lyn A. Woodward
Attorney at Law
309 Prescott Lane
Pacific Grove, California 93950
(831) 375-1191
Counsel for Petitioner

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I. PEOPLE V. SANDERS, WHICH IS CURRENTLY PENDING BEFORE THE CALIFORNIA SUPREME COURT, ADDRESSES PAROLE AND PROBATION SEARCHES CARRIED OUT WITHOUT PRIOR KNOWLEDGE OF DEFENDANT'S PAROLE OR PROBATION STATUS.

On February 28, 2001, the California Supreme Court granted review in *People v. Sanders*, S094088 (previously published at 84 Cal.App.4th 1211). Initially the Court deferred briefing, and held the case pending resolution in *People v. Moss*, S087478. When the California Supreme Court subsequently dismissed *People v. Moss*, it ordered briefing in *People v. Sanders* as followings:

> "This court has granted review in order to resolve the question of whether an otherwise unlawful warrantless search of a private residence may later be jus-

tified by the fact that a parolee resident in that home, even if the police were unaware of the resident's parole status at the time of the search." (Respondent's Appendix B, page 1 [Appellant's Opening Brief on the Merits in *People v. Sanders*, S094088].)

The issue now pending in P*eople v. Sanders* involves the constitutionality of searches where law enforcement officers have no advance notice of a search condition, but subsequently learn of such a condition and rely upon it to justify an otherwise illegal search. That issue is different from the issues raised in Barron's Petition. Barron asks this court to consider whether some degree of individualized suspicion is required to perform a probation search of a passenger in a vehicle lawfully stopped for a traffic violation, and he specifically challenges the California Supreme Court's "arbitrary and capricious" standard

established in *People v. Reyes* (1998) 19 Cal.4th 743. The California Supreme Court has not agreed to review its arbitrary and capricious rule for parolees and probationers, and that rule remains in conflict with the manner in which the Fourth Amendment is applied by most other states as well as lower federal courts. *See Reyes*, 19 Cal.4th at 760-762, J. Kennard diseenting.

II. THE WAIVER ISSUE WAS SPECIFICALLY ADDRESSED BY THE APPELLATE COURT.

Respondent argues that the question of whether a probationer wholly waives his Fourth Amendment rights "was not presented to the lower courts." (Brief in Opposition, 8.) The issue of waiver was addressed by the Court of Appeal, and is inherent to the decision of whether some degree of individualized suspicion is required to support a parole search.

The Court of Appeal here addressed the waiver issue as follows:

> Our Supreme Court has held that searches of parolees or probations without any reasonbale suspicion are lawful. (*People v. Woods* (1999) 21 Cal.4th 668, 675; *People v. Reyes* (1998) 19 Cal.4th 743, 751; *People v. Bravo* (1987) 43 Cal.3rd 600, 607.) The court has reasoned that an adult probationer, like appellant, consents to a waiver of his Fourth Amendment rights in exchange for the opportunity to avoid serving a state prison sentence....The consent is a complete waiver of Fourth Amendment rights, with the exception of the right to object to searches conducted for harassment or in an unreasonable manner. (*Ibid.*; *see also In re Tyrell J.* (1994) 8 Cal.4th 68, 80 [juvenile probationer subject to a valid

search condition has no reasonable expectation of privacy over his person or property]; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1006 [same].)

The Court of Appeal thus concluded that no degree of individualized suspicion is required before a parole or probation search is conducted.

III. CONCLUSION.

For the reasons set forth herein, and in his Petition, Barron respectfully requests that this Court accept review of his case.

DATED: November 20th, 2002

Respectfully submitted,

Lyn A. Woodward
Attorney at Law
309 Prescott Lane
Pacific Grove, California 93950
Attorney for Petitioner